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Supreme Court, U.S.
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Supreme Court of the United States

No. 904, October Term, 1970

DUNCAN E. McPHERSON,

Petitioner,

vs.

MANNING WALKER, JOHN M. PETERS, PETER J. PETERS, PAUL H. SULHOFF, WINFRED A. PHILLIPS, GRACE G. PHILLIPS, and WINFRED A. PHILLIPS, d/b/a WINN PHILLIPS AGENCY,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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INDEX

	Page
Jurisdiction	1
Questions Presented	2
Statement of the Case	3
Conclusion	4

RULE CITED

Par. 1 (b). Rule 19 of the Rules of the Supreme Court	2

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JURISDICTION

Petitioner, Duncan E. McPherson, hereinafter referred to as McPherson, can only invoke the jurisdiction of this court under 28 U. S. C. § 1254 (1). He seeks certiorari to the United States Court of Appeals for the Eighth Circuit.

QUESTIONS PRESENTED

The District Court reached findings of fact and conclusions of law which were fatal to McPherson's claim for relief and dismissed his action. Upon appeal to the Court of Appeals, McPherson only raised the issue as to whether the evidence was sufficient to support the findings of the District Court. No complaint was made with respect to the fairness of the trial, nor was any constitutional issue propounded. The Court of Appeals determined that the findings were "fully justified by and based on substantial evidence" (Petition for Writ of Certiorari, Appendix, p. 23).

McPherson now apparently alleges that the Court of Appeals in some unspecified fashion sanctioned a departure from the accepted and usual course of judicial proceedings by the District Court. Thus he seeks to come within the last category of cases mentioned in paragraph 1 (b) of Rule 19 of the Rules of the Supreme Court. In that effort he is totally wide of the mark.

The proceedings in District Court were conducted with fairness, impartiality and decorum. McPherson was represented there by able and aggressive counsel. The evidence was against him. He lost. He was accorded a complete review by a fair and impartial panel of Court of Appeals judges. They found no error. McPherson's rights as a litigant have been scrupulously observed.

There is nothing about this case which would justify the grant of his petition for certiorari.

STATEMENT OF THE CASE

The facts are sufficiently stated in the memorandum and order of the District Court and the opinion of the Court of Appeals, both of which are set out in the Appendix (pages 11-23) made a part of the Petition for Writ of Certiorari by McPherson.

McPherson in that petition has made numerous false statements, some of which cannot be ignored:

1. McPherson claimed that one of counsel for respondents, Emmet Tinley, objected to a purported appeal bond by McPherson on the ground that the property in the litigation was not worth $250.00. Actually, McPherson simply tendered to the clerk of court a purported pledge of his equities in the properties involved in the litigation as a cost bond upon appeal to the Court of Appeals. Respondents objected that there was not a proper *surety*. The objection was sustained. McPherson still seems unaware of the distinction between "surety" and "security". He finally did file a proper cost bond on his third attempt.

2. McPherson attempted to imply that the Attorney General of Iowa in some fashion has a part in this litigation (page 6 of his Petition for Writ of Certiorari). The Attorney General had no part in any phase of this litigation or in the factual circumstances alleged to have been the basis for McPherson's claim.

3. McPherson alleges that the record is incomplete in particulars specified at the top of page 8 of his Petition for Writ of Certiorari. These allegations are totally

false. The record is complete. The supposed questions and answers exist only in McPherson's inaccurate memory.

4. McPherson attempts to create the impression that he was denied proper pre-trial discovery. To the contrary, his trial counsel conducted extensive discovery without being impeded in any respect.

5. McPherson inaccurately reports a written admonishment which he received from United States District Judge William C. Hanson (page 7 of Petition for Writ of Certiorari). Before McPherson finally retained legal counsel in the trial court he filed a motion to require Mr. Tinley and Edmund A. McGinn, attorney for Mr. and Mrs. Phillips, not to discuss the case without leave of court and a motion for default judgment together with an eight page "Brief Concerning Perjury." As a part of the memorandum and order overruling these motions the court stated:

> "The Court must again caution and admonish the plaintiff against the use of 'intemperate and unnecessary remarks' which have no proper place in the orderly administration of justice."

CONCLUSION

McPherson has been accorded justice. Every procedural protection has been extended to him, notwithstanding his unremitting personal and scandalous attacks upon litigants and counsel and now even the courts.

There is no reason for a grant of his Petition for Certiorari.

Respectfully submitted,

Emmet Tinley,
Jack W. Peters

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Attorneys for Respondents, Manning Walker, John M. Peters, Peter J. Peters and Paul H. Sulhoff

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REPLY BRIEF TO BRIEF IN OPPOSITION FOR WRIT OF CERTIORARI

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